IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Revision No.2119 of 2006.
Date of Decision: January 23,,2007.

Rajiv Bhatnagar & Anr.

....**Petitioners**

through
Mr. Arun Jain, Advocate
with Mr. Ajay Kaushik, Advocate

Versus

Saraswati Educational Foundation & Ors.

...**Respondents**
through
Mr. Amit Rawal, Advocate, for respondents No. 1 to 3.

Mr. Avnish Mittal, Advocate, for respondent No.4.

Mr. A.K.Chopra, Sr. Advocate with Mr. Harminder Singh, Advocate, for respondents No. 5 and 6.

Mr. Parveen Gupta, Advocate, for respondents No. 7 and 8.

Mr. Ashok Aggarwal, Sr. Advocate with Mr. Amit Aggarwal, Advocate, for respondents No. 9 and 10.

CORAM:

HON'BLE MR. JUSTICE SURYA KANT.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

SURYA KANT,J.

This revision petition under Article 227 of the Constitution of India is directed against the order dated 25th February, 2006 passed by the learned Additional District Judge, Jalandhar whereby the inter-locutory

order dated 22nd July, 2005 passed by the learned Civil Judge (Senior Division), Jalandhar, directing the parties to maintain *status-quo* with regard to the original set of Trustees till the disposal of the suit, has been set aside and as a consequence thereto, the application under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure moved by the plaintiff-petitioners along with their suit, has been dismissed.

[2]. A brief reference to the facts may be made.

[3]. On 11th May, 2001, a Trust, known as "Saraswati Educational Foundation" (in short "the Trust") was created in which there were the following eight Trustees:-

"(i) Rajiv Bhatnagar;
(ii) Rasika Bhatnagar;
(iii) Mohinder Sharma;
(iv) Poonam Sharma;
(v) Vipin Mahajan;
(vi) Poonam Mahajan;
(vii) Arun Singh Dhumal; and
(viii) Anurag Thakur"

[4]. On the same day, the Trust-Deed was also duly executed. The Trust entered into an agreement with Delhi Public School Society and pursuant thereto, established a school known as Delhi Public School, Jalandhar. Apparently, after a while certain disputes cropped up amongst the Trustees which led to passing of one of the two disputed resolutions on 3rd March, 2003. Vide the said resolution, Mr. Vipin Mahajan and Ms. Poonam Mahajan are stated to have been removed from the trusteeship whereas, Dr. T.S.Kler and Dr.Neelam Kler, who had expressed their willingness for appointment as Trustees, were inducted as such. The aforementioned resolution is stated to have been signed by (i) Mohinder

Sharma, (ii) Anurag Thakur, (iii) Arun Singh Dhumal and (iv) Rajiv Bhatnagar, i.e., four out of the eight original Trustees as well as the two newly appointed Trustees, namely, Dr.T.S.Kler and Dr. Neelam Kler, who attended the meeting as the `invitees'. The plaintiff/petitioners also claim that Ms. Rasika Bhatnagar and Ms. Poonam Sharma, two Trustees though due to their pre-occupation, could not attend the afore-stated meeting held on 3rd March, 2003, however, they had given their consent in writing in respect of "the matters covered in the Agenda" which was duly enclosed with the notice of the meeting. It is, thus, asserted on behalf of the petitioners that in fact the aforementioned resolution dated 3rd March, 2003 is deemed to have been passed by six out of eight original Trustees.

[5]. Thereafter comes the second resolution in dispute purported to have been passed on 20th August, 2004, vide which the plaintiff/petitioners, Mr. Rajiv Bhatnagar and Mrs. Rasika Bhatnagar were removed as Trustees of the Trust. The said resolution is stated to have been signed by the six Trustees, namely, (i) Vipin Mahajan, (ii) Anurag Thakur; (iii) Mohinder Sharma; (iv) Arun Singh Dhumal; (v) Ms. Poonam Sharma; and (vi) Ms. Poonam Mahajan.

[6]. From the Photostat copies of the `proceedings book', `notices' allegedly sent to the Trustees to attend the meetings and `consent letters' allegedly given by some of them regarding certain Agenda Items taken up by the Trust in its meetings, further indicate that the two groups/sets of Trustees, who are at logger heads, are maintaining their separate records, the genuineness of which would be gone into by the learned trial Court in due course of time.

[7]. At this stage, it may also be profitable to notice that the Trust

has its own Rules and Regulations and in Sub-clause (1)(c) of Clause "B" which pertains to the procedure to hold the "Meetings" of the Trust, it is provided that a resolution for conducting any business shall be effective if it is passed by majority of the Trustees present, however, a resolution on matters of "special importance" shall be effective only if it is passed by 3/4th of all the Trustees of the Trust and has been agreed to by the Managing Trustee.

[8]. The matters of "special importance" have also been defined/listed which includes a meeting convened "to appoint or remove any of the Trustees". The parties are *ad*-idem that in the light of the above noted provision in the Rules and Regulations, a Trustee can be appointed or removed only if the resolution is passed by 3/4th of the Trustees and is agreed to by the Managing Trustee.

[9]. The above mentioned second resolution dated 20th August, 2004, prompted the plaintiff-petitioners to file a suit for declaration to the effect that the same is illegal, void abinitio and they continue to be the Trustees of the Trust. On the strength of the first resolution dated 3rd March, 2003, the plaintiff-petitioners also sought a decree for permanent injunction to restrain Shri Vipin Mahajan and Smt. Poonam Mahajan (who allegedly stood removed as Trustees) from acting and/or posing as the Trustees of the Trust. Along with the suit, the plaintiff/petitioners also filed an application under Order 39 Rules 1 and 2 read with Section 151 C.P.C. for the grant of ad-interim injunction to restrain Vipin Mahajan and Poonam Mahajan (defendants No. 9 and 10) from acting as Trustees and to allow the plaintiff/petitioners to participate in the meetings of the Board of Trustees.

[10]. The learned Civil Judge (Senior Division), Jalandhar, vide his

order dated 22nd July, 2005, *prima facie*, held that defendants No. 9 and 10, namely, Vipin Mahajan and Poonam Mahajan could not be restrained from acting as Trustees as they were apparently not removed in accordance with the Trust Rules and Regulations. Learned Trial Court further observed that *prima facie,* the resolution dated 20th August, 2004 was also not free from all doubts. Consequently, the learned trial Court deemed it just and proper to direct both the parties to maintain *status-quo* with regard to the original set of Trustees till the disposal of the suit and directed that all the Trustees who were initially party to the Trust including the plaintiff/petitioners shall continue to be the Trustees till the final disposal of the suit.

[11]. Aggrieved, the defendant/respondents No. 1 to 4 filed an appeal and while allowing the same, the learned Additional District Judge, firstly observed that the resolution dated 3rd March, 2003 whereby the plaintiff/petitioners were removed from the Trusteeship "**has already been set aside by the learned lower Court**". Thereafter, validity of the resolution dated 20th August, 2004 has been upheld with the following observations:-

> "Perusal of the documents shows that the meetings held on 20.8.04 was called by Shri Anurag Thakur, one of the managing Trustees and it was passed by six Trustees, i.e. by ¾ majority. The learned counsel for the respondents/plaintiff have failed to show how this resolution has not been validly passed. Further more the minutes of the meetings held on 20.8.04 were approved and confirmed on the next date of meeting held on 24.8.04 as per rules and regulations of the Trust deed".

[12]. The Appellate Court further held that the plaintiff/petitioners herein have failed to make out any *prima facie* case or balance of convenience in their favour. According to the learned Appellate Court, the plaintiffs have also failed to prove as to what irreparable loss would be caused to them if the ad-interim injunction was not granted.

[13]. The appellate order, referred to above, is being assailed by the plaintiff/petitioners through this revision petition.

[14]. I have heard learned counsel for the parties at length and perused the orders passed by the Courts below as well as various documents placed on record and/or handed-over during the course of hearing. Undoubtedly, while considering the prayer for ad-interim injunction, three well known principles, namely, (i) whether *prima facie* case is made out or not; (ii) whether or not the balance of convenience lies in applicant's favour; and (iii) whether any irreparable loss would be suffered by the applicant, if the ad-interim injunction is not granted, are required to be kept in view.

[15]. There are two resolutions purported to have been passed by the original Trustees, on 3rd March, 2003 and 20th August, 2004. While the plaintiff/petitioners assert that the first resolution is deemed to have been passed at the behest of six out of eight original Trustees and is, thus, valid being in consonance with clause B(i)(c) of the Rules and Regulations of the Trust, the defendant/respondents heavily rely upon the second resolution dated 20th August, 2004 which is claimed to have been passed by six out of eight original Trustees. Pertinently, if the first resolution dated 3rd March, 2003 is assumed to be valid, the second resolution dated 20th August, 2004 can not sustain at all for the reason that the six Trustees, who are purported to have signed the same, include Shri Vipin Mahajan and Ms. Poonam

Mahajan, who are claimed to have been removed from the Trusteeship vide the first resolution dated 3rd March, 2003. However, if the first resolution dated 3rd March, 2003 is declared invalid, it would veil the latter resolution dated 20th August, 2004 with a legal cover.

[16]. Any expression of opinion in relation to the validity of both the resolutions at this stage would, thus, be a pre-emptory adjudication of an "issue" which can be decided only after both the parties lead their respective evidence.

[17]. Since the plaintiff/petitioners are relying upon the alleged "written consent" given by two of the original Trustees in support of the first resolution dated 3rd March, 2003 and both the Trustees are apparently family-members of some of those original Trustees who are admittedly signatory to the said first resolution, the plaintiff-petitioners have made out an arguable case. Similarly, they are sought to be removed from the Trusteeship at the strength of the 2nd resolution which is signed by those very Trustees whose trusteeship is under dispute due to the first resolution dated 3rd March, 2003, it can not be said that the plaintiff/petitioners do not have a *prima facie* case in their favour.

[18]. It appears from the documents on record that stakes of all the original Trustees (except two of them) are quite high as crores of rupees have been invested in the Trust Fund. It is not the case of the defendant-respondents that the contribution allegedly made by the plaintiff/petitioners in the common corpus, i.e., the trust fund has been repaid/discharged. The balance of convenience, therefore, also tilts in favour of the original Trustees.

[19]. Similarly, if the affairs of the Trust are run in the absence

and/or by dislodging the original Trustees including the plaintiff-petitioners, it may cause not only the financial losses which of course can always be compensated in monetary terms, but also the irreparable loss of social and professional reputation, especially when they are sought to be removed in a stigmatic manner.

[20]. In these peculiar facts and circumstances of the case, recourse chosen by the learned trial Court to over-look both the resolutions till the suit is finally decided on merits and allowing the original Trustees to continue with the affairs of the Trust, was not *per-se* illegal which could warrant interference by the Appellate Court.

[21]. Contrary to it, the learned Additional District Judge totally misdirected himself in assuming that the learned trial Court has "set aside" the resolution dated 3rd March, 2003, knowing fully well that no such declaration was/could be granted by the learned trial Court while deciding an application for ad-interim injunction. Similarly, while deciding an ad-interim matter, the learned Appellate Court ought not to have given a firm declaration of validity in respect of the resolution dated 20th August, 2004. The impugned order passed by the learned Appellate Court is, thus, erroneous in law as well as on facts.

[22]. However, an event which is subsequent to the two resolutions dated 3rd March, 2003 and 20th August, 2004, has been brought on record by the defendant-respondents by way of Civil Misc. No.19900-CII of 2006. According to them, respondents No. 9 and 10 (Vipin Mahajan and Smt. Poonam Mahajan) volunteered to resign as Trustees and pursuant thereto an Agreement dated 16th March, 2005 (Annexure A-1) was executed, in terms whereof the unsecured loan advanced by both of them to the Trust,

amounting to Rs.1,25,36,000/- (Rs. One Crore Twenty Five lac and thirty six thousand only), has been returned to them by way of bank cheques encashable between 11th June, 2005 to 30th June, 2005 towards full and final settlement. Those cheques are stated to have been encashed by Shri Vipin Mahajan and Smt. Poonam Mahajan and both of them, thereafter, have tendered their resignations on 30th June, 2005.

If both respondents No. 9 and 10 have voluntarily relinquished the Trusteeship and settled their accounts, then in that event, *prima facie*, they can no longer be treated as Trustees of the Trust.

[23]. There is nothing on record to suggest that respondents No. 9 and 10 have challenged the Agreement dated 16th March, 2005 and/or have disputed the return of amount of unsecured loan by the Trust to them. As per clause - 2 of the above stated agreement dated 16th March, 2005, respondents No. 9 and 10 were to continue as Trustees till all the amounts, agreed to be paid to them through three cheques, were cleared and actually paid. It, thus, appears that unless the validity and/or propriety of the agreement dated 16th March, 2005 is questioned by respondents No. 9 and 10 (Vipin Mahajan and Smt. Poonam Mahajan), they can not be allowed to participate in the meetings of the Trust and/or in its decision making process, especially when they have already settled their accounts and have no stakes in the affairs of the Trust.

[24]. It may be mentioned here that vide order dated 23rd May, 2006, this petition was disposed of with certain directions. The said order was, however, set aside by the Hon'ble Supreme Court as no findings were recorded by this Court justifying setting aside the order passed by the Appellate Court. The matter was accordingly remitted for re-hearing and till

then, the directions issued by this Court were allowed to operate.

[25]. During the course of hearing, it was also apprised by learned counsel for the parties that in the main suit, the plaintiff/petitioners have already led part of their evidence which was near completion.

[26]. Consequently, and for the reasons afore-stated, the impugned order dated 25th February, 2006 passed by the learned Additional District Judge, Jalandhar, is set aside, while the order dated 22nd July, 2005 passed by the learned Civil Judge (Senior Division), Jalandhar, is modified and this revision petition is disposed of with the following directions:-

(i) It is directed that during the pendency of the civil suit, the Trustees who originally constituted the Saraswati Educational Foundation, namely, petitioners No.1 and 2, respondents No. 3,4,7,8, except respondents No. 9 and 10 (Vipin Mahajan and Smt. Poonam Mahajan), shall continue to act as the Trustees;

(ii) All the meetings of the Trust shall be held and decisions shall be taken strictly as per the original bye-laws of the Trust by rest of the original Trustees without reference to amendments, if any, made subsequently;

(iii) Any resolution in terms whereof the Trust is to incur an expenditure of more than Rs.1,00,000/- (Rs.One lac) shall be implemented by its management after seeking prior permission of the Trial Court;

(iv) The Trust and its original Trustees namely, those referred to in direction No.(i) above, are, hereby, restrained from alienating, transferring or creating any

encumbrance over the trust properties during the pendency of the suit;

(v) Having regard to the nature of suit and the fact that fate and future of an educational institute is hanging in uncertainty, the learned Civil Court is directed to make an endeavour to dispose of the suit as early as possible and preferably within six months;

(vi) the observations and/or exclusion of respondents No. 9 and 10 (Vipin Mahajan and Smt. Poonam Mahajan) from acting as the Trustees, being tentative in nature only, shall not cause any pre-judice to their pending claim, if any, nor shall preclude them from adopting any recourse in law, as may be available, to assert their continuation as Trustees and/or any other claim.

[27]. Nothing said in this order shall be construed as an expression of opinion on merits of the case and the learned trial Court shall decide the controversy involved in the suit without being influenced of what has been said above.

January 23 , 2007. **(SURYA KANT)**
dinesh **JUDGE**